

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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November 15, 2005

Jobi Skejfte, Office Manager
Dakota Chiropractic of Aberdeen, PC
P.O. Box 318
Aberdeen, South Dakota 57402-0318

David J. Fransen, Esq.
P.O. Box 1433
Aberdeen, South Dakota 57402

Subject: ***In re James Dean Clayton***
Chapter 7; Bankr. No. 05-10158

Dear Ms. Skejfte and Mr. Fransen:

The matter before the Court is the Motion for Order Directing Clerk of Courts to Discharge Judgments Discharged in Bankruptcy filed by Debtor on October 31, 2005. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, an order will be entered granting Debtor's motion.¹

Summary. On November 18, 2004, Dakota Chiropractic of Aberdeen, PC ("Dakota Chiropractic") obtained a judgment against James D. Clayton in state court for \$352.00 plus costs. On May 23, 2005, James Dean Clayton ("Debtor") filed for relief under chapter 7 of the bankruptcy code. Debtor listed Dakota Chiropractic as an unsecured creditor on his schedule F.

On May 26, 2005, the Bankruptcy Clerk served notice of commencement of the case on Debtor's creditors, including Dakota Chiropractic. The notice of commencement of case clearly stated the deadline for filing a complaint objecting to discharge or to determine the dischargeability of a particular debt was August 22, 2005.

Neither Dakota Chiropractic nor any of Debtor's other creditors filed a complaint objecting to discharge or to determine the dischargeability of a particular debt. On August 23, 2005,

¹ The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

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Debtor was therefore granted a discharge under § 727 of the bankruptcy code.

On October 31, 2005, Debtor filed a Motion for Order Directing Clerk of Courts to Discharge Judgments Discharged in Bankruptcy. Dakota Chiropractic's judgment was listed in Debtor's motion. On November 14, 2005, Dakota Chiropractic filed an objection to Debtor's motion, in which it described the circumstances giving rise to its claim against Debtor.² On that same date, Debtor filed a response to Dakota Chiropractic's objection, in which he argued:

Debtor asserts that he has met all of the requirements for this debt to be discharged under § 524(a) of the Bankruptcy Code. The debt in question was incurred pre-petition, the debt was listed on Debtor's Schedule F and on Debtor's Mailing List, the mailing address used for this Creditor on Debtor's Schedule F and Mailing List is the Creditor's current mailing address, the Creditor had timely notice of the filing of the Debtor's bankruptcy case, and the deadline has expired for the Creditor to file a non-dischargeability complaint.

Discussion. Section 524(a)(1) of the Bankruptcy Code provides:

(a) A discharge in a case under this title -

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

Section 524(a)(1) does not require the debtor to do anything to void a judgment. The discharge automatically voids any judgment that represents a determination of the debtor's personal liability for a debt that has been discharged.

² By letter dated November 14, 2005, the Court advised Dakota Chiropractic that if this matter proceeded to a hearing, it would need to retain an attorney to represent it. See 28 U.S.C. § 1654; Fed.R.Bankr.P. 9010(a); and *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996).

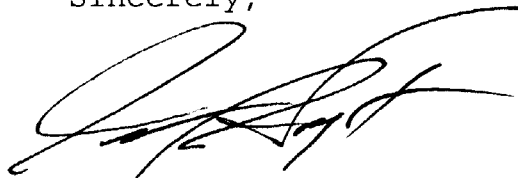
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Section 15-16-20 of the South Dakota code establishes the procedure for removing such a judgment from the records of the clerk of court for the county in which it was docketed. When a debtor receives a bankruptcy discharge, she may file a motion in the bankruptcy court for an order listing each state court judgment that has been voided. Upon receipt of the bankruptcy court's order, the clerk of court for the county in which the judgment was docketed must enter it in the judgment docket. This has the effect of discharging the listed judgments from and after that date.

In this case, Dakota Chiropractic received timely notice of Debtor's bankruptcy. It did not object to Debtor's discharge or to the dischargeability of its claim. Its claim was therefore discharged on August 23, 2005. Its judgment was voided on that same date. Debtor is therefore entitled to the relief requested in his motion.

The Court will enter an appropriate order.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

cc: case file (docket original; copies to parties in interest)

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

NOV 15 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By ED

NOTICE OF ENTRY
Under F.R. Bankr. P. 9022(a)
Entered

NOV 15 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

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